Freedom of Information and Protection of Individual Privacy

HUMAN RESOURCES GUIDELINES

Human
Resources
Secretariat

FREEDOM OF INFORMATION

- and -

PROTECTION OF INDIVIDUAL PRIVACY

HUMAN RESOURCES GUIDELINES

Contact:
Freedom of Information Co-ordinator,
Human Resources Secretariat

TABLE OF CONTENTS

Introduction	1 - 3
Statement of Principle	1 - 3
Collection of Personal Information	1 - 4
Retention and Disposal of Personal Information	1 - 5
Use of Personal Information	1 - 6
Disclosure of Personal Information	1 - 7
Right of Access to Personal Information	1 - 10
Right of Correction of Personal Information	1 - 11

HUMAN RESOURCES MANAGEMENT GUIDELINES

Human Resources Planning	2 - 3
Collection of Information	2 - 4
Use of Information	2 - 4
Disclosure of Information	2 - 5

PERSONNEL ADMINISTRATION GUIDELINES

Competition Files	3 - 1
Reference Checks	3 - 9
Medical Information Records	3 - 17
Inter-Ministry Transfer of Personnel Records	3 - 23
Staff Relations Matters	3 - 29
Disclosure of Information Relating to Violation of Law	3 - 41
Classification/Organizational Information	3 - 45

APPENDIX

Suggested Formats	4 - 1

APPEAL DECISIONS

NOTES

INTRODUCTION

The Freedom of Information and Protection of Individual Privacy Act, 1987 (the "Act") is based on two related principles. Firstly, it gives every person the right, subject to specific exemptions, to access records in the custody or under the control of an "institution" (i.e. a ministry of the government of Ontario, or an agency, board, commission, corporation or any other body designated by regulation). Secondly, it protects the privacy of individuals with respect to personal information collected and held by an institution, and provides individuals with a right of access to that information.

Human Resources branches, in ministries and agencies, as custodians of personal information records, will play a vital role in the protection of privacy and the right of access to personal information. The following guidelines have been developed specifically for human resources administrators to provide an overview of the impact of the legislation on human resources processes. Most of the information in these guidelines has been drawn or adapted from the Freedom of Information and Protection of Individual Privacy Manual, issued by Management Board Secretariat. These guidelines are not a replacement for the Freedom of Information Manual or the expertise available from your ministry's Freedom of Information Co-ordinator. They describe the impact the Act will have on existing human resources practices and transactions, specifically those relating to the collection, retention, use, disclosure, access to and correction of personal information.

The intent of these guidelines is to assist you in making decisions and alert you to situations with which you may have to contend. If you are unsure of the application of the legislation to specific transactions or want to check the interpretation of a specific section of the Act, we suggest that you consult with your Freedom of Information Co-ordinator.

STATEMENT OF PRINCIPLE

The statutory provisions of the Freedom of Information and Protection of Individual Privacy Act as they relate to human resources administration should be consistently applied across ministries, agencies, boards, and commissions of the provincial government.

COLLECTION OF PERSONAL INFORMATION

Almost every aspect of human resources administration involves the collection of personal information. Section 38 and 39 of the Freedom of Information Act sets out the authorities necessary for the collection of personal information and establishes the circumstances under which personal information may be collected and the corresponding obligations of ministries and agencies in that regard.

Section 38 of the Act expands the definition of personal information to include non-recorded information. Accordingly, the rules of collection which apply to personal information in the documented form also apply to non-recorded personal information obtained directly from an individual in the course of an interview or personal information obtained in the course of a reference check.

The legislation explicitly identifies the conditions under which personal information may be collected. Personal information shall not be collected on behalf of the ministry unless the collection is:

a) expressly authorized by statute, which means that explicit authority rather than implied authority to collect the personal information is required;

b) of information to be used for the purposes of law enforcement; or

c) necessary to the proper administration of a lawfully authorized activity.

The Freedom of Information legislation provides that personal information shall only be collected by an institution directly from the individual to whom the information relates unless certain conditions exist which would allow collection from a source other than the individual. The conditions for allowing indirect collection of personal information are outlined in section 39 (1). These exemptions to direct collection of information establish the basis upon which information may be collected for a number of human resources transactions including grievance, disciplinary and termination matters.

When personal information is collected, the individual to whom the information relates must be notified of the collection. Subject to the specific qualifications set out therein, section 39 (2) of the act makes it mandatory that the ministry or agency inform the individual to whom the information relates of:

a) the legal authority for the collection;

b) the principal purpose(s) for which the personal information is intended to be used; and

c) the title, address and phone number of a public official who can answer the individual's questions about the collection.

This obligation applies to information that is collected either directly or indirectly. Whether information is collected on a form or by telephone or through an interview, the necessary notification should be provided to the individual in writing.

Existing practices relating to the collection of personal information should be reviewed to ensure that they conform with the requirements of the legislation. Mechanisms should be developed to ensure that whenever possible, personal information is collected directly from an individual and specific criteria are met before indirect collection of information takes place.

RETENTION AND DISPOSAL OF PERSONAL INFORMATION

It should be ensured that the interests of individuals are protected in planning and effecting the retention and disposal of personal information. Section 40 of the legislation provides that personal information that has been used by the ministry shall be retained for use for a period prescribed by regulation. The period prescribed by regulation is a minimum time period only and any other retention requirements or authorities of a ministry which extend this time period must be adhered to. The minimum retention period is intended to ensure that an individual has a reasonable length of time during which to access their personal information before it is destroyed. Each ministry is responsible for ensuring that personal information is disposed of in a secure manner.

Section 40 of the Act also requires that a ministry take reasonable steps to ensure personal information is not used unless it is accurate and up-to-date. Information should where feasible be checked for accuracy at the time it is collected and the date of collection should be noted. Any verification of information should be documented.

USE OF PERSONAL INFORMATION

The Freedom of Information legislation has been developed in recognition of the general principle that an individual's right to privacy and control over the collection of information relating to him/her extends to the right to have some control over the use and disclosure of this information.

It should be noted that use and disclosure are not the same. Use means to employ, to do something , to take action. Use is a separate and distinct action from disclosure. Disclosure means to make known, to view or reveal information.

Personal information may be used by a ministry having custody or control of the information where certain circumstances exist. Section 41 of the legislation limits the use of personal information by a ministry where there has not been consent by the individual to whom the information relates.

Where the individual has consented to the ministry's use of their personal information, the consent should be in writing and should specify:

- the specific personal information to be used;
- the use for which consent is given;
- the date of consent;
- the ministry or agency to whom consent is given.

Consent by the individual is not required where the use of the information is for the purpose, or is consistent with the purpose, for which the information was obtained or compiled. When information is collected, the individual to whom the information relates is informed of the principal purpose or purposes for which the personal information is intended to be used. The information must be used in a manner consistent with that stated purpose. For a use to be for a consistent purpose, the individual to whom the information relates must have some reasonable expectation of the use and it must be compatible with the purpose given at the time the information was collected.

Also, consent is not required where information is disclosed to a ministry by another ministry under the authority of section 42 (disclosure) and is used for that purpose. In other words, a ministry may use personal information which has been disclosed to it by another ministry pursuant to this section. This information may only be used for the purpose for which it was disclosed under section 42 (see page 1 -7).

DISCLOSURE OF PERSONAL INFORMATION

Disclosure involves the release of personal information both internally, within the ministry having custody or control of the information, and externally, to third parties who receive the information in their day-to-day operations or who specifically request the information.

The Freedom of Information legislation establishes a privacy protection scheme which protects an individual's personal information from unauthorized disclosure to individuals other than themselves. Exemptions to the individual's privacy and access rights are specific and are addressed in sections 21, 42, and 49 of the Act:

- Section 21 provides an exemption to the general right of access to records and is designed to protect personal privacy;

- Section 42 sets out the complete code for permitted disclosure of personal information. It specifies the rules for disclosure of personal information other than to the individual to whom the information relates;

- Section 49 specifies the grounds for denying an individual access to his/her personal information.

Under section 42, a ministry shall not disclose personal information in its custody or under its control except in the following circumstances:

- Disclosure would have to be allowable under section 21 (Personal Privacy) which provides the linkage between the general right of access to information and an individual's right to privacy. The disclosure would be based on a request by a third party for access to information.

- An individual may specifically consent to the disclosure of his/her personal information. The consent must be in writing and indicate the specific personal information to be disclosed, to whom the information may be disclosed, the date of consent and the ministry or agency to whom the consent is given for disclosure.

- For a purpose consistent with that for which the information was collected. Such disclosure must be consistent with the stated purpose for which the information was obtained. For example, on on inter-ministry transfer of an employee, basic employee data and information on work history, payroll and benefits on an employee file may be transferred from one ministry to another since the information will be used for the same purpose or a consistent purpose. Information which does not meet this criteria such as outdated medical information which is not relevant to the new position may not be transferred.

- To an employee or officer of the ministry for the purpose of performing his/her duties and where disclosure is necessary in the discharge of the ministry's functions. In order to permit access to personal information, the officers and employees of the ministry must "need to know" the information in order to perform their duties and the disclosure must be necessary and proper in discharging the ministry's functions.

  A ministry's functions include the administration of acts and regulations, as well as activities necessary to the overall operations of the ministry.

  It should be noted that this provision applies only to the disclosure of personal information to employees or officers of the ministry maintaining the information.

- To comply with an Act of Parliament or the Legislature or an agreement thereunder.

- When disclosure is by a law enforcement institution to a law enforcement agency.

- To another institution or law enforcement agency in Canada. The disclosure must aid an investigation leading to or likely to lead to a law enforcement proceeding.

- Where compelling circumstances exist affecting the health or safety of an individual or where contact with the next of kin or a friend of an individual is being facilitated.

- To a member of the Legislative Assembly that has been authorized by a constituent to whom the information relates to make inquiries on his/her behalf.

- To a member of the bargaining agent who has been authorized by an employee to whom the information relates to make an inquiry on the employee's behalf.

- To the Provincial Auditor, the Ombudsman, the Responsible Minister, the Information and Privacy Commissioner, the Government of Canada in order to facilitate the auditing of shared cost programs, the Archives of Ontario and Statistics Canada.

RIGHT OF ACCESS TO PERSONAL INFORMATION

The Freedom of Information legislation establishes a legal right of access by employees to personal information maintained about them by the ministry. The legislation establishes a process by which employees may review information of a personal nature directly pertaining to them. Access to information is qualified by certain basic categories of exemption which are clearly specified in section 49.

The Freedom of Information legislation is not intended as a means of formalizing all requests for information. The legislation allows the head of a ministry or agency to release information voluntarily, in the absence of a request or in response to an oral request, provided that nothing in the Act prohibits the release of that information. Access to information that was available by custom or practice immediately before the Act came into force should continue to be available without the necessity of a formal request. In most cases an employee should not have to use the Freedom of Information legislation to obtain access to his/her personal information.

In granting access to personal information, the ministry must be assured of the identity of the individual to whom they are providing access and should work co-operatively with the individual to establish a mutually agreeable time and place for review of personal information records. Appropriate facilities for the examination of the information should ensure the privacy of the individual and steps should be taken to ensure that the information is adequately secured. A representative of the ministry should be present during the examination of the information to provide explanation or clarification of information being examined.

RIGHT OF CORRECTION OF PERSONAL INFORMATION

Individuals who are given access to their own personal information also have the right to request correction of that information if they believe it to be in error or there is an omission. An individual may request correction of only that information to which he/she has been granted access. Correction requests may relate to both factual information and to other kinds of information which may include opinions, observations, ideas, etc.

It is the decision of the ministry as to whether the request for correction will be honored. Decisions made with respect to these requests are subject to appeal to the Information and Privacy Commissioner. In determining whether to make a requested correction, the ministry should consider the nature of the information and whether the accuracy can be verified. Corrections which may have a significant impact on the individual, for example affecting their financial status, should be carefully verified, including documentary proof if warranted. Individuals may only request correction to their own information to which they have right of access.

In the case of opinion material, the ministry should consider the source of the opinion. An opinion expressed by the individual which has not been accurately recorded would, in all likelihood, be corrected, whereas an opinion of the individual which has changed since it was originally stated, would probably not be corrected. Likewise, opinion material obtained from sources other than the individual would not normally be changed.

Corrections should be made to the original material. The corrections should also be made to or attached to any other copies of the information held by the ministry.

An individual who has been given access to his/her personal information and who has requested but not received a correction to that information may require that a statement of disagreement be attached to that personal information. The statement should be attached to the original material and would state the corrections which were requested by the individual but not made.

The individual may require that any person or body to whom information has been disclosed within one year prior to the correction or statement of disagreement be notified of the correction or statement of disagreement. Again, the institution should make such notifications if requested to do so by the individual.

HUMAN RESOURCES PLANNING

1.1 Human Resources Planning is often defined as the process used to ensure that sufficient numbers of the right people are in the right place at the right time in order to carry out the business of the organization.

Human Resources Planning exists in all ministries and agencies, each being accountable for its own human resources plan.

The exception to this accountability relates to executives where the responsibility for human resources planning lies within the ministry, the Human Resources Secretariat and the Office of Executive Resources.

Human resources planning may include but is not limited to the following components:

a) Appraisal of employees - including career interest surveys, performance evaluations, assessments of potential, attitude surveys, etc.

b) Inventories of Potential Candidates for future vacancies.

c) Succession Planning - the determination of a short list of applicants for future jobs.

d) Training and Development - the identification of experience/educational needs for employees to realize their career goals and/or corporate goals.

The decision making process relating to the above components is usually dealt with through a committee structure.

The Freedom of Information legislation impacts significantly on the human resources planning process. The legislation sets out specific requirements which govern the collection, use, disclosure and access to personal information which is gathered in the planning process.

1.2 COLLECTION OF INFORMATION

The appraisal of employees and the development of inventories of potential candidates involve the collection of personal information. The normal process of collection will be directly from the individual about whom the information relates. Where the indirect collection of information is necessary, the terms of S. 39 (1) of the Act must be complied with. This section authorizes indirect collection where:

1) the individual authorized another manner of collection;

2) information is received from another ministry which had the authority for collection and disclosure;

3) the Commissioner has authorized another manner of collection.

When information is collected directly or indirectly, the individual to whom the information relates must be notified of the collection in accordance with S. 39 (2) of the Act. This notification is not necessary when the information is not solicited, that is, where the individual submits personal information at his/her own initiative for use in an inventory. However, when unsolicited information is entered into or used in a selection process, the individual must be notified in accordance with S. 39 (2).

1.3 USE OF INFORMATION

When information is collected in the human resources planning process, the individual to whom the information relates should be informed of the principal purpose or purposes for which the information is intended to be used e.g. succession planning, training and development, etc. The consent of the individual regarding the use of the information by the ministry is not necessary where the information collected is used in a manner consistent with the stated purpose. When information is not used for a consistent purpose, that is, where there is not a reasonable expectation of the use of the information by the individual, consent for use is required in accordance with S. 41 (a) of the Act.

1.4 DISCLOSURE OF INFORMATION

In accordance with S. 47 (1) of the Act, individuals have the right to access and review personal information collected about themselves in the human resources planning process. This applies to information collected directly or indirectly and would include any written evaluations by a committee relating to potential, strengths, weaknesses, etc.

In order to ensure the integrity of the human resources planning process in light of the Freedom of Information legislation, ministries may consider publishing information on:

a) the ministry human resources planning process and function;

b) the responsibility of ministry human resources planning committees;

c) how employees may access information on themselves which may be used in succession planning, training and development, etc.

d) how employees may request changes to personal information collected.

COMPETITION FILES

1.1 A competition file contains personal information and is regarded as part of a Common Personal Information Bank; although the information retained would ordinarily be accessed by competition number rather than by an individual's name or other personal identifier. A competition file is subject to the provisions of the Freedom of Information and Protection of Privacy legislation with respect to information collection, retention, use, disclosure and access.

1.2 Advertising of a vacancy or for the purpose of a inventory requires action on the part of a ministry to obtain information on individuals and is, in effect, a solicitation of applications and resumes. Accordingly, notice regarding the collection of personal information must be given to each applicant in the competition under S. 39 (2) of the Act.

> **S. 39 (2)** Where personal information is collected on behalf of an institution, the head shall, unless notice is waived by the responsible minister, inform the individual to whom the information relates of,
>
> **(a)** the legal authority for the collection;
>
> **(b)** the principal purpose or purposes for which the personal information is intended to be used; and
>
> **(c)** the title, business address and business telephone number of a public official who can answer the individual's questions about the collection.

The mechanism for providing notification to candidates in a competition in accordance with the requirements of the Act is a modification to the standard letter of acknowledgement of receipt of applications which will include:

(a) the statutory authority for the collection of personal information as part of a competition, i.e. Public Service Act, R.S.O. 1980, C. 418, S. 4 (c), 6 (1) and 24.

(b) a statement that the personal information is intended to be used for recruitment and staffing purposes.

(c) the title, address and telephone number of the personnel officer or other official who will be able to answer the candidates questions about the collection of personal information.

1.3 Unsolicited applications and resumes submitted by individuals on their own initiative are not covered by the provisions of S. 38 and S. 39 of the Act as the information was not collected or requested by the ministry. Accordingly, notice of collection under S. 39 (2) would not need to be provided to the individual.

Where an unsolicited application or an application in an inventory is entered into a specific competition, the provisions of S. 38 and S. 39 will come into effect as if the applicant was responding to a specific advertised vacancy. Under such circumstances, notice of the collection under S. 39 (2) must be provided.

1.4 Following the advertising of a vacancy, additional personal information is collected during the competition process, e.g. at the interview stage and through the checking of references. Information which is not in a recorded form at the time it is collected is also governed by the rules applicable to the collection of personal information.

> **S. 38 (1)** In this section and in section 39, "personal information" includes information that is not recorded and that is otherwise defined as "personal information" under this Act

Guidelines specific to the treatment of reference check information are provided in the following section.

1.5 Section 47 (1) of the Freedom of Information and Protection of Privacy Act states:

> **S. 47 (1)** Every individual has a right of access to:
>
> **(a)** any personal information about the individual contained in a personal information bank in the custody or under the control of an institution.

Each candidate in a competition will, therefore, have a right of access under the provisions of S.47 to any personal information held about him/her which is contained in a competition file. The right of access will include all documentation on the competition file which is pertinent to the disposition of the individual's candidature in the competition process including the candidate's evaluation and rating by the selection board.

***Note:** Section 40 (1) requires that personal information be retained by the ministry for a period to be prescribed in the regulations under the Act.

1.6 Candidates are also entitled to access the competition file, including the evaluation and rating of other individuals when access does not constitute an unjustified invasion of personal privacy under S. 21 of the Act.

To assist in determining what documentation retained on the competition file may be disclosed to a candidate requesting access, reference should be made to S. 10 (2) of the legislation:

> **S. 10 (2)** Where an institution receives a request for access to a record that contains information that falls within one of the exemptions under sections 12 to 22, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions.

When a candidate request for access to the competition file is received, the ministry will be required to make a determination on whether or not the identity of other candidates could be ascertained from the evaluation and rating information of the selection board on file, if the names of the individuals were severed from the competition records.

Where the candidate requesting access could reasonably determine the identity of other candidates, even if individual names were excluded from the competition documentation, the ministry should allow an individual candidate access to only his/her records and evaluation material.

The ministry, after considering the relevant circumstances, may allow access to the evaluation and ranking material on the successful candidate or other candidates in the competition where the identities of the individuals could be ascertained from the evaluation and ranking material.

The ministry may determine that although information to be disclosed on a successful candidate is presumed to constitute an unjustified invasion of personal privacy, under S. 21 (3), the provisions of S. 21 (3) may be overridden after consideration of all of the provisions of S. 21 (2).

The ministry head will, therefore, have the discretion to disclose evaluation and ranking material on a successful candidate or other candidates, on the request of a candidate who was unsuccessful in the competition, under S. 21 (2) (a) and (d).

> **S. 21 (2)** A head, in determining whether a disclosure or personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
>
> **(a)** the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
>
> **(d)** the personal information is relevant to a fair determination of rights affecting the person who made the request.

Except in unusual circumstances, resumes and applications in a competition file will not be subject to access by anyone other than the individual to whom the information relates. Normally, disclosure of such information would be presumed to constitute an invasion of privacy, as outlined in section 21 (3) of the Act. The process described above to determine the appropriateness of disclosing evaluation and ranking material also applies to the evaluation of a request to disclose resumes and applications.

It should be noted that section 21 (3) of the Act places a heavy onus on the individual requesting access to prove that the privacy provision should be overridden and the information be released.

Where the head determines that disclosure of personal information on the successful candidate in a competition is proper, notice shall be provided to the affected party informing them of the intended disclosure of the information.

> **S. 28 (1)** Before a head grants a request for access to a record,
>
> > **(b)** that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purposes of clause 21 (1) (f),
>
> the head shall give written notice in accordance with subsection (2) to the person to whom the information relates.

This notice provides the affected party with the opportunity to make representations on their behalf as to why the information should not be disclosed.

REFERENCE CHECKS

2.1 Reference checking conducted for employment purposes is subject to the provisions governing the collection of personal information as set out in the Freedom of Information and Protection of Privacy Act.

Reference check information obtained as part of a competition process will be retained on the competition file, which in turn constitutes part of a Common Personal Information Bank. The initial notice provided to the candidate in the application acknowledgement may, therefore, be used to meet the notice requirement of S. 39 (2) for the collection of personal information if it sets out the information required by the section.

2.2 Obtaining reference check information requires the collection of personal information from a source other than the individual applicant. A ministry must, therefore, meet additional provisions of S. 39 (1) of the Act before a reference check is conducted:

> **S. 39 (1)** Personal information shall only be collected by an institution directly from the individual to whom the information relates unless,
>
> > **(a)** the individual authorizes another manner of collection.

The written consent of the candidate, obtained at the interview stage of the selection process, will be the normal method of authorizing the ministry to contact a candidate's present and/or past employers.

2.3 In addition to the provisions for the collection of personal information, employing ministries should also refer to the access and disclosure provisions of the legislation.

Part II of the Freedom of Information and Protection of Privacy Act governing access to government records states:

> **S. 21 (1)** A head shall refuse to disclose personal information to any person other than the individual to whom the information relates, except,

(a) upon the prior written request or consent of the individual, if the record is one which the individual is entitled to have access; or

(f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Part III of the Act which sets out provisions governing the protection of individual privacy states:

S. 42 An institution shall not disclose personal information in its custody or under its control except,

(a) in accordance with Part II

(b) where the person to whom the information relates has identified that information in particular and consented to its disclosure;

(c) for the purpose for which it was obtained or compiled or for a consistent purpose;

(d) where disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and where disclosure is necessary and proper in the discharge of the institutions functions.

The consent form provided to the candidate at a competition interview should include statements which enable:

- the selection board to access and collect job related information by means of a reference check under section 39 (1) of the Freedom of Information and Protection of Individual Privacy Act;

  AND

- the candidate's present employer and/or former employer(s) (where the employer is an institution as defined in the Act) to disclose job related reference check information under section 42 (b) of the Act.

Space should be provided on the consent form for the candidate to specify the names, position titles and telephone numbers of specific individuals from whom reference check information may be obtained.

Individuals in ministries and agencies providing reference check information must ensure that consent has been obtained for the disclosure of information.

2.4 Employment reference checks which are unsupported by a written consent from the candidate are presumed to be an unjustified invasion of privacy under S. 21 (3) of the Act:

> **S. 21 (3)** A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> **(d)** relates to employment or educational history;
>
> **(g)** consists of personal recommendations or evaluations, character references or personnel evaluations.

2.5 The applicant consent form for reference check purposes will enable the employing ministry to access job related information on educational history, employment history, work performance and absenteeism. Other personal information such as medical, psychiatric or violation of law information should only be accessed where it can be demonstrated to be necessary to determine the applicant's ability to perform the duties of the position.
Where it can be demonstrated that due to the requirements of the position being staffed, the acquisition of such additional personal information is necessary, the information may be disclosed without the consent of the applicant (See sections 3.2 and 6.3 of the guidelines.)

2.6 The receipt of proper reference information may be established as a requirement in the competition process. Where a candidate in a competition is asked to sign a consent form and the candidate does not wish to authorize the conduct of a reference check; or where the references provided by the candidate are restrictive to the acquisition of job related information; the ministry may:

- determine the candidate's suitability for employment on the basis of the complete findings of the selection board, in the absence of a reference check; or

- request the candidate's consent to contact individuals identified by the ministry for reference information which has been deemed necessary for evaluation purposes; or

- determine the candidate's suitability for employment using the lack of reference information as a factor in the final evaluation.

***Note:** The Freedom of Information legislation is applicable to the checking of references within the provincial government, the private sector and other government jurisdictions. This type of personal information may not be collected from any source unless there is authority to collect under section 38 (2).

***Note:** Section 42 (d) of the Act should not be used to justify the disclosure of information for reference purposes where access has not been granted by the applicant.S. 42 (d) states:

S. 42 An institution shall not disclose personal information in its custody or under its control except,

(d) where disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and where disclosure is necessary and proper in the discharge of the institution's functions.

2.7 An applicant in a competition may request access to information obtained in a reference check under S. 47 (1) of the legislation, which states:

> **S. 47 (1)** Every individual has a right of access to,
>
> > **(a)** any personal information about the individual contained in a personal information bank in the custody of under the control of an institution; and
> >
> > **(b)** any other personal information about the individual in the custody or under the control of an institution with respect to which the individual is able to provide sufficiently specific information to render it reasonably retrievable by the institution.

Under S. 49 (c) of the Act:

> **S. 49** A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > **(c)** that is evaluative or opinion material compiled solely for the purpose of determining suitability, eligibility or qualifications for employment or for the awarding of government contracts and other benefits where the disclosure would reveal the identity of a source who furnished information to the institution in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence.

Section 49 (c) (above) would enable a ministry to deny access by a candidate to reference check information where the individual who provided the information has requested confidentiality.

MEDICAL INFORMATION RECORDS

3.1 Medical information records on employees should be maintained in either the General Employment History and Payroll Information File or the Medical Information File.

The following types of records should be maintained in the General Employment History File:

- documentation on normal absences due to illness and any supporting medical certification;
- medical documentation compiled for purposes of attendance reporting and entry into the CARS system;
- basic medical certificates for leaves of absence, e.g. certificates relating to maternity leaves;
- correspondence and documentation relating to attendance improvement;
- attendance statistics and records.

The following types of records should be maintained in the Medical Information File.

- diagnostic and prognostic medical information;
- medical information relating to Long-Term Income Protection and Rehabilitative employment;
- correspondence regarding medical conditions;
- pre-employment medical tests;
- medical records relating to Workers' Compensation.

Information held on the General Employment History and Payroll Information File could be disclosed during a reference check, providing that the candidate has signed the usual consent form enabling the selection board to conduct a check of references.

3.2 There may be unusual circumstances where the acquisition of information in the medical file is demonstrably necessary to determine a candidate's fitness to carry out the requirements of an advertised position.

Medical information that is pertinent to an individual's ability to perform the duties of a position applied for may be disclosed in a reference check under S. 42 (c) of the Act.

The information would be used for the same purpose for which it was obtained or for a consistent purpose. Such disclosure under this section of the Act may take place without the consent of the applicant.

> **S. 42** An institution shall not disclose personal information in its custody or under its control except,
>
> **(c)** for the purpose which it was obtained or compiled or for a consistent purpose.

3.3 An employee's General Employment History and Medical Information files maintained by a ministry Human Resources Branch will ordinarily be transferred to the employee's new ministry in the inter-ministry transfer of the employee under S. 42 (c) of the Freedom of Information and Protection of Privacy Act.

However, prior to transferring the employee's files to another institution, the transferring ministry should ensure that all medical information maintained on file has been compiled under one of the legal authorities specified for the collection of medical information.

These legal authorities are:

R.R.O. 1980, Reg. 881 (under the Public Service Act),

S. 67	(1-4)	- Workers' Compensation Benefits
S. 68	(1-3)	- Medical Examination
S. 81	(1-5)	- Long Term Income Protection
S. 99	(1&2)	- Medical Certificate for absence

R.S.O. 1980, C. 321, The Occupational Health and Safety Act,

S. 25	- Notice of death or injury
S. 26	- Notice of accident/illness

Any medical information compiled solely for use by the ministry from which the employee is transferring, or for which there is no on-going medical requirement should be removed from the Medical Information file prior to transfer and retained according to the regulations.

When an employee is returning to the workforce after being on Long Term Income Protection, information relating to the LTIP leave is available to the employing ministry through the Human Resources Secretariat.

3.4 Medical information files maintained by ministry Human Resources Branches constitute a Common Personal Information Bank. Under the Freedom of Information and Protection of Privacy Act, an employee will have a right of access to this information unless the information meets the non-disclosure provisions, i.e. S. 49 (d):

> **S. 49** A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > **(d)** that is medical information where the disclosure could reasonably be expected to prejudice the mental or physical health of the individual.

There will be very few instances where medical information on a ministry file will be exempt from access by the employee to whom the information pertains. Where the employee is entitled to access his/her medical information, disclosure of this information to persons other than the employee will usually only be possible with the specific consent of the individual under S. 21 (1) (a).

As referenced in the reference check section of these guidelines, the disclosure of records relating to the provision of medical services in the broadest sense is also presumed to be an invasion of privacy under S. 21 (3) (a) of the Act.

INTER-MINISTRY TRANSFER OF PERSONNEL RECORDS

4.1 The transfer of an employee from one ministry to another necessitates the transfer of records. The inter-ministry transfer of personnel records is a two-fold process - it involves the release of information by one ministry and the receipt of information by a second ministry.

The release of personnel records is subject to the provisions governing the disclosure of personal information as set out in S. 42 of the Freedom of Information and Protection of Individual Privacy Act.

> **S. 42** An institution shall not disclose personal information in its custody or under its control except,
>
> > **(b)** where the person to whom the information relates has identified that information in particular and consented to its disclosure;
> >
> > **(c)** for the purpose for which it was obtained or compiled or for a consistent purpose;

The receipt of personnel records is subject to the provisions governing the collection of personal information as set out in S. 39 of the Act.

> **S. 39 (1)** Personal information shall only be collected by an institution directly from the individual to whom the information relates unless,
>
> > **(b)** the personal information may be disclosed to the institution concerned under section 42;

Accordingly, a ministry may receive personal information from another ministry which has already collected the information and which is allowed to disclose it under S. 42. A ministry may receive the information for which the other ministry had the authority for collection and disclosure.

4.2 In accordance with S. 42 all personnel records relating to an employee may be transferred from one ministry to another where the employee has consented to the disclosure of the information.

When the individual to whom the information relates has consented to the disclosure of his or her personal information, the consent must be in writing and indicate:

- the specific personal information to be transferred;
- the date of consent;
- the ministry to which the information may be transferred.

4.3 In order to determine what information on an employee file may be transferred to another ministry without consent, two issues must be addressed:

1) The ministry which is transferring the personal information must determine whether the information is relevant to the performance of duties in the receiving ministry. If the information is relevant, then it may be disclosed under S. 42 (c) as it would be used for the same purpose for which it was obtained or for a consistent purpose.

2) Is the receiving ministry entitled to collect the information?
It may do so only if there is compliance with S. 38 (2) of the Act. One precondition for collection is that the personal information must be necessary to the proper administration of a lawfully authorized activity.
Most of the information in an employee's personnel file could be collected under the authority of S. 38 (2).

The following types of information would normally meet the above-noted criteria and could therefore be transferred to another ministry without the consent of the individual:

- basic employee data;
- work history, payroll and benefits information;
- career planning information;

- documentation on disciplinary action;
- garnishees and other salary deduction information which is current and active;
- diagnostic and prognostic medical and psychiatric information which is clearly relevant to the performance of duties in the receiving ministry;
- information relating to Long-Term Income Protection, Rehabilitation employment and Workers' Compensation which is relevant to the performance of duties in the receiving ministry;
- training course information;
- possible violation of law information where the investigation is ongoing and the information is necessary to continue the investigation or to prosecute the offence;
- past violation of law information where the information is relevant to the future employment of the individual.

In general the following types of information would not meet the relevancy test as previously described and would therefore require the specific consent of the individual for the inter-ministry transfer:

- performance appraisals, personal recommendations or evaluations, or character references;
- violation of law information where a charge has been dropped or the individual has been found not guilty of the offence;
- medical, psychiatric and other types of information which are not relevant to the performance of duties in the receiving ministry.

STAFF RELATIONS MATTERS

5.1 Any staff relations matter that involves personal information about an identifiable individual is subject to the provisions governing the collection, use and disclosure of personal information as set out in the Freedom of Information and Protection of Individual Privacy Act.

Most staff relations matters may involve grievance proceedings where personal information is collected and used for a hearing before a tribunal. Other staff relations matters will involve investigations where personal information is collected and used in a pre-grievance capacity or in a situation which may not result in a grievance. These staff relations matters will relate primarily to investigations on disciplinary, suspension and termination matters.

Each staff relations matter should be reviewed on a individual basis in relation to the Freedom of Information legislation. The type of grievance or investigation will determine which sections of the legislation impact on and govern:

- how information may be collected;
- the obligations of the ministry with regard to notification to the individual about the collection of personal information;
- whether the information compiled in the grievance or investigation file may be accessed by the individual about whom the information relates or by other individuals.

5.2 TRIBUNALS

The Freedom of Information legislation makes several references to tribunals and quasi-judicial tribunals. For the purpose of human resources management, a quasi-judicial tribunal may be defined as any tribunal having the authority or discretion to decide issues affecting the rights and obligations of opposing parties. The following are examples of quasi-judicial tribunals:

- Public Service Grievance Board;
- Ontario Provincial Police Grievance Board;
- Crown Employees Grievance Settlement Board;

- Ontario Public Service Labour Relations Tribunal;
- Public Service Classification Rating Committee.

5.3 COLLECTION OF INFORMATION

Part III of the Act which sets out provisions governing the collection of information states:

> **S. 39 (1)** Personal information shall only be collected by an institution directly from the individual to whom the information relates unless,
>
> **(f)** the information is collected for the purpose of the conduct of a proceeding or a possible proceeding before a court or judicial or quasi-judicial tribunal;
>
> **(g)** the information is collected for the purpose of law enforcement; or
>
> **(h)** another manner of collection is authorized by or under a statute.

A grievance proceeding file or an investigation file which is established for the conduct of a proceeding or possible proceeding before a quasi-judicial tribunal may contain personal information which has been collected indirectly, from a source other than the individual to whom it relates.

This indirect collection of information does not require the consent of the individual who is the subject of the grievance or investigation and applies whether or not a proceeding eventually takes place.

Personal information which is collected for purposes which fall within the definition of law enforcement may also be collected indirectly and without the consent of the individual.

In addition, Section 22 of the Public Service Act and Section 18 of Regulation 881 under the Public Service Act specifically allows for the investigation, gathering of information and evidence and the holding of hearings in cases involving discipline, termination and suspension.

5.4 NOTIFICATION REGARDING COLLECTION OF INFORMATION

The collection of information in an investigation or for the purpose of preparation for a grievance proceeding requires action on the part of the ministry and is, in effect, a solicitation of information. In accordance with S. 39 (2) of the Act, notice regarding the collection of information must be given to the individual about whom the information relates.

Where information is collected directly from an individual, notification should be provided at the time of collection. Where information has been collected indirectly, in accordance with S. 39 (1), the individual should be informed as soon as reasonably possible after collection. The notice of legal authority for the collection (S. 39 (2) (a)) should include reference to S. 39 (1) which allows for the indirect collection. The notification should be in writing or written confirmation of notice should be obtained from the individual.

Investigations related to law enforcement provide the exception to the notification requirement.

> **S. 39 (3)** Subsection 2 (notification to the individual) does not apply where the head may refuse to disclose the personal information under subsection 14 (1) or (2) (law enforcement).

Law enforcement is defined in S. 2 (1) as:

a) policing,

b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and

c) the conduct of proceedings referred to in clause (b).

Where access to information may be denied in accordance with S. 14 on law enforcement, it is not required that the individual about whom the information relates be informed of the authority for collection, the purpose for collecting or the contact person.

*Note: This exemption from the notification requirement will normally apply only where a criminal investigation or an investigation into an offence under provincial law is being undertaken.

5.5 ACCESS TO INFORMATION COMPILED

The Freedom of Information legislation provides individuals with the basic right of access to information about themselves.

S. 47 (1) Every individual has a right of access to,

(a) any personal information about the individual contained in a personal information bank in the custody or under the control of an institution.

Each grievance or investigation file should be reviewed on an individual basis to determine whether access to the documents on file should be granted or denied. The information in this section relating to access to file documents, whether it be a grievance file or an investigation file, refers to case preparation material only. Restrictions on access do not encompass information which would normally be shared with the subject of the investigation or grievance or his/her representatives including letters of discipline, agreed statements of fact or documentation exchanged throughout the grievance process or investigation.

The following are exemptions to the right of access:

A) SOLICITOR-CLIENT PRIVILEGE

This exemption is discretionary. Access may be denied where a solicitor has been involved in the preparation or development of a record related to a grievance proceeding or investigation and disclosure of the information would prejudice the ministry's position in a proceeding or possible proceeding before a quasi-judicial tribunal.

S. 19 A head may refuse to disclose a record that is subject to a solicitor-client privilege or that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation.

This exemption applies to information such as confidential communications of factual information, advice, materials obtained from third parties (including written opinions, statements taken from witnesses or reports prepared by investigators) provided that the material was obtained for the purpose of preparing and presenting (or in contemplation of) a case before a quasi-judicial tribunal or for the purpose of Crown Counsel giving legal advice.

Where access is requested to a grievance or investigation file and solicitor-client privilege may be invoked, a ministry solicitor should determine which documents are exempt from access under solicitor-client privilege.

B) ADVICE TO GOVERNMENT

This exemption is discretionary. Access may be denied to records in a grievance file which would reveal advice or recommendations of a public servant or any other person employed in the service of the ministry or a consultant retained by the ministry for use in a proceeding (or in contemplation of a proceeding) before a quasi-judicial tribunal. Advice or recommendations would include information on how to proceed with a grievance, the witnesses that should or should not be called, strategies, use or precedents, etc.

This exemption also applies to records in an investigation file that are developed in a pre-grievance capacity or in a situation which may not result in a grievance. Access to records in an investigation file may be denied where they reveal, for example, recommendations or advice regarding discipline of an employee.

The term "recommendation" refers to formal recommendations about courses of action to be followed which are usually specific in nature and proposed mainly in connection with a particular decision. "Advice" refers to less formal suggestions about particular approaches to take or courses of action to follow.

This exemption would not cover transcripts of interviews with potential witnesses, recorded statements, etc.

S. 13 (1) A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

C) PLANS RELATING TO THE MANAGEMENT OF PERSONNEL

Access may be denied where any plans in a grievance proceeding or investigation file contain information (personal or otherwise) which relates to the management of personnel or the administration of an institution that have not yet been put into operation or made public. Once the plan has been put into operation or made public this exemption no longer applies.

S. 18 (1) A head may refuse to disclose a record that contains,

(f) plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public.

D) INFORMATION FROM A CONFIDENTIAL SOURCE

A grievance or investigation file may contain information or frank opinions which were provided in confidence during an investigation relating to an individual's suitability, eligibility or qualifications for employment. Where such information was supplied in confidence from a source, which requested that their identity not be revealed, access to this information in the grievance or investigation file may be denied on the basis of S. 49 (c) (Exemptions to right of access). This exemption to the right of access strictly applies to the disclosure of information which in the opinion of the ministry would reveal the identity of the informant.

E) LAW ENFORCEMENT

Access may be denied where grievance proceeding or investigation files meet the requirements of law enforcement as defined in S. 2. This will usually occur only where a criminal investigation or an investigation into an offence under provincial law is being undertaken. The following are some of the grounds on which access may be denied under law enforcement (S. 14):

- Where disclosure of information would interfere with, hinder or impede the carrying out of an investigation or prosecution on a law enforcement matter, any records relating to the investigation would be exempt from disclosure (S. 14 (1) (a))*;

- Where the evidence gathered in an investigation is insufficient to support the commencement of a proceeding in a court or tribunal, the record of the investigation would still be exempt since the investigation was undertaken with a view to a law enforcement proceeding(S. 14 (1) (b))*;

- Where disclosure of information on a law enforcement matter could disclose the identity of a confidential source or disclose information furnished only by the confidential source (S. 14 (1) (d));

- Where disclosure of information could reasonably be expected to deprive a person of the right to a fair trial or impartial adjudication (S. 14 (1) (f)).

***Note: S. 14 (1) (a) & (b)** are only applicable during the period of investigation. When the matter is disposed of, these exemptions to the right of access no longer apply.

5.6 Where a ministry is required to produce documentary evidence pursuant to the rules of a court or a quasi-judicial tribunal, these exemptions to right of access will have no application.

S. 64 (2) This act does not affect the power of a court or a tribunal to compel a witness to testify or compel the production of a document.

5.7 OTHER STAFF RELATIONS MATTERS

Many staff relations files which relate to working conditions and employee benefits will not involve the collection and use of personal information. These files must be carefully reviewed to determine whether any exemption under Part II of the Freedom of Information legislation applies.

Where personal information is not collected or used there are no restrictions on collection of information or requirements relating to notification about collection.

The Freedom of Information legislation provides a general right of access to a record or part of a record including staff relations files which do not contain personal information.

> **S. 10 (1)** Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless the record falls within one of the exemptions under sections 12 to 22.

The right of access to benefits and working conditions staff relations files is subject to the following exemptions:

A) SOLICITOR-CLIENT PRIVILEGE (S. 19)

This exemption is reviewed in detail in section 5.5 of the guidelines.

B) THIRD PARTY INFORMATION

Access may be denied to information in a staff relations file received from a third party which may be used in labour relations matters, particularly collective bargaining.

> **S. 17 (1)** A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

a) prejudice significantly the the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied; or

c) result in undue loss or gain to any person, group, committee or financial institution or agency.

The following are examples of the grounds on which access would be denied under labour relations information:

- Where the confidential labour relations information supplied may affect the current or future negotiating position of the parties;

- The disclosure of confidential information on file would likely result in similar information not being supplied to the ministry in the future.

C) ECONOMIC AND OTHER INTERESTS OF ONTARIO

Access may be denied to staff relations files where it is necessary to ensure that there is not premature disclosure of certain plans or negotiating strategy.

The following are examples of the grounds on which access may be denied to staff relations information under S. 18 of the Act:

- Where disclosure of information in a staff relations file could be detrimental to the financial interests of the government (S. 18 (1) (d));

- Where non-disclosure of the positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on by or on behalf of the government or a ministry is necessary in order to protect the government's or a ministry's ability to negotiate effectively with other parties (S. 18 (1) (e));

- Where confidential information in a staff relations file relates to the management of personnel or the administration of an institution that have not yet been put into operation or made public. This exemption covers the internal management plans of a ministry such as reorganization, relocation or agency creation prior to implementation (S. 18 (1) (f)).

Where a ministry is required to produce documentary evidence pursuant to the rules of a court or a quasi-judicial tribunal, these exemptions will have no application (S. 64 (2)).

It should be noted that access to relevant documents in classification grievances is provided for in Article 27.11.3 of the Collective Agreement between Management Board of Cabinet and the Ontario Public Service Employees Union.

DISCLOSURE OF INFORMATION RELATING TO VIOLATION OF LAW

6.1 Where information relating to a possible violation of law is maintained by a ministry or agency on an employee's General Employment History and Payroll Information file, it should not be disclosed as part of a routine reference check unless it is relevant to the new job. The circumstances under which disclosure is permitted are referenced under S. 42 (g) of the Act:

> **S. 42** An institution shall not disclose personal information in its custody or under its control except,
>
> > **(g)** Where disclosure is to an institution or law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.

See also other clauses of S. 42.

6.2 Law enforcement information falls within the exemptions to the individual's general right of access to records under Part II of the Freedom of Information and Protection of Privacy Act.

In determining whether or not to disclose law enforcement information, the ministry should refer to both the definition of "law enforcement" contained in S. 2 (1) of the Act and to the provisions of S. 14 (1), (2), and (3) which enable the ministry head to exercise discretion with respect to the disclosure.

6.3 The Freedom of Information and Protection of Individual Privacy Act protects the privacy of an individual who may have been charged with an offence which has not yet been disposed of by a court. Section 21 (3) (b) states:

> **S. 21 (3)** A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

(b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

The exception contained in S.21 (3) (b) above recognizes that a ministry or agency which is in possession of evidence of a possible violation of law must have the power to disclose that evidence to a police force or other law enforcement agency and to the Crown Attorney or other person responsible for prosecuting the offence.

In addition, special circumstances may exist which justify the disclosure of personal information relating to outstanding charges against an employee. Where a possible violation of law is relevant to a position applied for by the individual charged, the presumption of an unjustified invasion of personal privacy in clause 21 (3) (b) could be rebutted so that information could be disclosed on a reference check.

6.4 Information concerning a possible violation of law may be transferred to an employee's new ministry on an inter-ministry transfer when an investigation is on-going and the information is necessary to continue the investigation or to prosecute the offence.

Information on a past violation of law may be transferred to another ministry on an inter-ministry transfer where the offence is relevant to future employment of the individual.

Violation of law information should not be transferred to another institution on an inter-ministry transfer where a charge has been dropped or the individual has been found not guilty of the offence.

CLASSIFICATION/ORGANIZATIONAL INFORMATION

7.1 The Freedom of Information legislation establishes a legal right of access to a record or part of a record in the custody or under the control of an institution.

> **S. 10 (1)** Every person has a right of access to a record or part of a record in the custody or under the control of an institution unless the record or the part of the record falls within one of the exemptions under sections 12 to 22.

The exemptions in sections 12 to 22 relate to such matters as cabinet records, law enforcement, third party information, solicitor client privilege and personal privacy. Classification and organizational information are not exempted from the right of access to records.

Section 21 (4) (a) of the Act states:

> **S. 21 (4)** Despite subsection 3 (presumed invasion of privacy), a disclosure does not constitute an unjustified invasion of personal privacy if it,
>
> > **(a)** discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution or a member of the staff of a minister;

This section specifies types of personal information whose disclosure is not an unjustified invasion of privacy. In other words, this section specifies clear cases of records that are accessible by the public and government employees despite the fact that they contain information that may be classified as personal. Accordingly, the following documents and information are accessible to the public and government employees under this provision of the Act.

Bargaining Unit:

- Position Specification an Class Allocation Forms (for Office Administration Group and other Bargaining Unit positions);
- Bargaining Unit Class Standards

Management Compensation Plan:

- Position Description (CSC 075)
- Position Evaluation (CSC 076)
- Management Compensation Plan Evaluation Standards

Executive Compensation Plan:

- Executive Position Questionnaire
- Executive Position Evaluation
- Ontario Public Service Executive Compensation Plan Job Evaluation Manual.

In all categories, the job description, designated classification, information relating to the classification of the position such as the justification factors and reasons, and the standards against which the position was compared are accessible under the provisions of the Freedom of Information legislation.

It should be noted that section 21 (4) (a) of the Act refers to salary range. The specific salary of an individual is classified as personal information and therefore disclosure of this information would constitute an invasion of privacy under section 21 (3) of the Act.

7.2 A head may refuse to disclose the internal management plans of a ministry (such as proposed organization structures, reorganization, relocation or agency creation plans) prior to implementation.

S. 18 (1) A head may refuse to disclose a record that contains,

(f) plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public.

This exemption to access is temporary unless the plan is never put into operation or never made public. Once a plan is implemented, this exemption to the right of access ceases to apply. Accordingly, finalized organization structures, reorganization, relocation or agency creation plans are accessible under section 10 (1) of the Act.

SUGGESTED FORMATS

APPENDIX 1: SUGGESTED FORMAT #1
CROSS-REFERENCE: PAGE 2 - 4, SECTION 1.2

NOTICE OF COLLECTION OF INFORMATION

_____

_____

_____

_____

RE: HUMAN RESOURCES PLANNING

Pursuant to Section 39 (2) of the Freedom of Information and Protection of Privacy Act, you are hereby notified that personal information relating to you is being collected for the principal purpose of human resources planning. The legal authority for this collection is the Public Service Act, S.4 (c) and S.24. Questions about this collection should be directed to:

The Manager,
Human Resources Planning,
[address]
[telephone number]

Note: The principal purpose may be more specific i.e., succession planning, training and development, etc.

APPENDIX 1: SUGGESTED FORMAT #2
CROSS-REFERENCE: PAGE 2 - 4, SECTION 1.3

CONSENT FORM

RE: HUMAN RESOURCES PLANNING

Pursuant to section 41 (a) of the Freedom of Information and Protection of Privacy Act, I _____, hereby consent to the use of information about me for the purpose of e.g. succession planning, training and development.

Date_____ Signed_____

Note: This form would only be necessary where human resources planning information is used for a purpose that is different than or inconsistent with the purpose stated when information was originally collected. For a purpose to be consistent there must be a reasonable expectation of the use of the information by the individual about whom the information relates.

APPENDIX 1: SUGGESTED FORMAT #3
CROSS-REFERENCE: PAGE 3 - 3, SECTION 1.2

NOTICE COLLECTION OF INFORMATION

_____

_____

_____

_____

RE: COMPETITION FILE ***

This will acknowledge receipt of your application/resume for the above-noted competition. The personal information contained in your application/resume is collected under the authority of the Public Service Act, S.4 (c), S.6 (1) and S.24 and will be used to assess your qualifications. Those candidates whose experience and qualifications are considered to most closely meet the requirements of the position will be invited to attend a personal interview. We expect to have made these contacts by _____.

If we do not contact you further, I would like to take this opportunity to thank you for your interest in working with the Ministry of _____.

Please contact me if you have any questions about the competition or the collection of information.

Yours truly,

NAME,
TITLE,
ADDRESS,
TELEPHONE NUMBER.

APPENDIX 1: SUGGESTED FORMAT #4
CROSS-REFERENCE: PAGE 3 - 12, SECTION 2.3

REFERENCE CHECK CONSENT FORM

RE: COMPETITION NO. _____.

Pursuant to Section 39 (1) of the Freedom of Information and Protection of Privacy Act, I _____, authorize the Ministry of _____ to contact the persons or organizations listed below for the purpose of obtaining reference information including information contained in my personnel file(s). These persons are authorized to disclose such information.

Name	Position Title	Telephone No.
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Date _____ Signed _____

ADDENDUM TO REFERENCE CHECK CONSENT FORM

RE: COMPETITION NO. _____.

Pursuant to Section 39 (1) of the Freedom of Information and Protection of Privacy Act, I _____authorize the Ministry of _____ to contact the persons or organization specified in the Reference Check Consent Form for the purpose of obtaining reference information contained in my personnel file(s) relating to:

Medical Records

Psychiatric Records

Violation of Law Records

Date _____ Signed _____

Note: Normally, consent by the applicant is not necessary in order to check medical, psychiatric or violation of law information where it can be demonstrated that such additional personal information is necessary to determine the applicant's ability to meet the requirements of the position. However, the above consent form may be necessary where it is determined that such additional information is required to fully evaluate an applicant, but it cannot be demonstrated that the information is absolutely necessary for the determination of suitability for the position.

CONSENT FORM

RE: INTER-MINISTRY TRANSFER OF PERSONNEL RECORDS

Pursuant to Section 42 (b) of the Freedom of Information and Protection of Privacy Act, I _____ authorize the disclosure and transfer by the Ministry of _____ to the Ministry of _____ , all personal information contained in my personnel file(s).

Date _____ Signed _____

Note: Most information in a personnel file(s) may be transferred to another ministry on the basis of relevance to performance of duties in the receiving ministry. The above consent form would be necessary where a ministry or agency wishes to transfer all personal information contained in the personnel file(s) including information which does not meet the relevancy test.

NOTICE OF COLLECTION OF INFORMATION

_____

_____

_____

_____

RE: INVESTIGATION/GRIEVANCE FILE

Pursuant to Section 39 (2) of the Freedom of Information and Protection of Privacy Act, you are hereby notified that personal information relating to you is being collected for the purpose of the pending grievance hearing and/or an investigation relating to _____. The legal authority for this collection is covered by the following: the Public Service Act, S.22; the Public Service Act, Regulation 881, S.18; the Crown Employees Collective Bargaining Act, S.7, 18 & 19. Questions about this collection should be directed to:

Director,
Human Resources Branch,
[address]
[telephone number]

Note: The pending grievance or investigation should be identified and briefly described